

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GREGORY KOSCHARA,

Plaintiff,

v.

Civil Action No. _____

PERFORMANT RECOVERY, INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought in response to Defendants violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C. §1692k(d), and 28 U.S.C. § 133.
3. Venue is proper in this district under 28 U.S.C. §1391(b) in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

4. Plaintiff Gregory Koschara is a natural person residing in the County of Livingston and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Defendant Performant Recovery, Inc. (hereinafter "Performant") is a foreign business corporation organized and existing under the laws of the State of California and is a "debt collector" as that term is defined by 15 U.S.C. §1692a(6).
6. The acts of the Defendants alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.
7. Defendant regularly attempts to collect debts alleged to be due another.

8. All references to either defendant herein shall mean said defendant or an employee of said defendant.

IV. FACTUAL ALLEGATIONS

9. That Plaintiff allegedly incurred a student loan. This debt will be referred to as the “subject debt.”
10. That the subject debt arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes. As such, said debt is a “debt” as that term is defined by 15 U.S.C. §1692a(5).
11. Plaintiff allegedly defaulted on the subject debt.
12. In or about September 7, 2016, Plaintiff received a collection letter from Defendant in an attempt to collect the subject debt.
13. In or about September 30, 2016, Plaintiff sent a letter via certified mail to the Defendant requesting verification of the alleged subject debt.
14. This letter was received by the Defendant on October 3, 2016.
15. In or about November 3, 2016, Defendant sent a letter to the Plaintiff demanding payment of the alleged subject debt.
16. To date, Plaintiff never received verification from Defendant of the subject debt.
17. That as a result of Defendant’s acts, Plaintiff became nervous, upset, anxious, and suffered from emotional distress.

V. CAUSE OF ACTION

18. Plaintiff repeats, realleges and incorporates by reference the allegations contained in paragraphs 1 through 17 above.
 - A. Defendant violated 15 U.S.C. §1692g(b) by not validating the subject debt despite Plaintiff’s request for verification of the subject debt.
19. That as a result of the Defendants FDCPA violations as alleged herein, Plaintiff became nervous, upset, anxious and suffered from emotional distress.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against each Defendant for:

- (a) Actual damages;
- (b) Statutory damages pursuant to 15 U.S.C. §1692k.
- (c) Costs, disbursements and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
- (e) For such other and further relief as may be just and proper.

VI. JURY DEMAND

Please take notice that Plaintiff demands trial by jury in this action.

Dated: June 14, 2017

/s/ Seth J. Andrews
Seth J. Andrews, Esq.
Kenneth R. Hiller, Esq.
Law Offices of Kenneth Hiller, PLLC
Attorneys for the Plaintiff
6000 North Bailey Ave., Suite 1A
Amherst, NY 14226
(716) 564-3288
Email: sandrews@kennethhiller.com
khiller@kennethhiller.com